

# Today is the 40th Anniversary of the HCCH Child Abduction Convention - A time for celebration but also a time for reflection

Today (25 October 2020) is the 40<sup>th</sup> Anniversary of the HCCH Child Abduction Convention. With more than 100 Contracting Parties, the HCCH Child Abduction Convention is one of the most successful Conventions of the Hague Conference on Private International Law (HCCH). As indicated in the title, this is a time for celebration but also a time for reflection. The Child Abduction Convention faces several challenges, some of which have been highlighted in this blog. The most salient one is that *primary carers* (usually mothers) are now the main abductors, which many argue was not the primary focus of the deliberations in the late 70s and that the drafters assumed that primarily (non-custodial) fathers were the abductors. See the most recent statistical analysis by Nigel Lowe and Victoria Stephens (year: 2015 applications), where it shows that 73% of the abductors were mothers (most primary or joint-primary carers) and 24% were fathers.

A related issue is that *custody laws* continue to change and are granting custody rights to non-primary carers (*e.g.* unmarried fathers, *ne exeat clauses*, etc.), which expands the scope of the Child Abduction Convention. There is also a growing trend of joint parenting.

Another challenge is the increasing importance of *human rights law* and its interaction with the Child Abduction Convention (see our previous post *Opening Pandora's Box*); in addition, the implementation and application of *article 13(1)(b)* of the Child Abduction Convention also poses challenges (see our previous posts on the HCCH Guide to Good Practice on the grave-risk exception under article 13(1)(b) of the Child Abduction Convention through the lens of human rights: Part I and Part II).

Moreover, other challenges have arisen in these difficult times of *pandemic*. In

this regard, Nadia Rusinova wrote a post on the “Child Abduction in times of Corona” and another one on “Remote Child-Related Proceedings in Times of Pandemic - Crisis Measures or Justice Reform Trigger?”

Last but not least, there is much uncertainty surrounding *Brexit* and the new legal framework of the UK. How about all the UK case law regarding *Brussels II bis* and the related issues regarding the Child Abduction Convention?

Such obstacles are not insurmountable (at least, I hope). Nevertheless, much reflection is needed to continue improving the operation of the Child Abduction Convention in this ever-changing world. Undoubtedly, the Child Abduction Convention is a must-have tool for States to combat internationally removal and retention of children by their parents or someone from the inner family circle in accordance with the UN Convention on the Rights of the Child.

For those of you who are interested in getting more information about this Convention: In addition to the Guides to Good Practice published by the HCCH (open access), some of the leading works in this area are (I will concentrate on **books** as there are countless articles, see also bibliography of the HCCH here. Some of the books are from Hart, click on the link on the top of the banner for more info):

### ***Monographic works:***

Schuz, Rhona. *The Hague Child Abduction Convention: A Critical Analysis*. Studies in Private International Law; Volume 13. Oxford: Hart Publishing, 2013.

***Former Secretary General of the HCCH, Hans van Loon, wrote a very helpful book review.*** See Van Loon, Hans, “R. Schuz, the Hague Child Abduction Convention: A Critical Analysis.” *Netherlands International Law Review*, 62, no. 1 (April, 2015): 201-206.

Beaumont, Paul R. and Peter E. McEleavy. *The Hague Convention on International Child Abduction*. Oxford Monographs in Private International Law. Oxford: Oxford University Press, 1999.

Garbolino, James D. and Federal Judicial Center. *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges*, 2015 (open access).

**More specific topic:**

**Written by Conflictolaws.net's General Editor: Thalia Kruger.**

Kruger, Thalia. *International Child Abduction: The Inadequacies of the Law*. Studies in Private International Law; Vol. 6. Oxford: Hart Publishing, 2011.

**Works in Spanish:**

*Child abduction and mediation*

Chéliz Inglés, María del Carmen. *La sustracción internacional de menores y la mediación: Retos y vías prácticas de solución*. Monografías. Valencia: Tirant lo Blanch, 2019.

Forcada Miranda, Francisco Javier. *Sustracción internacional de menores y mediación familiar*. Madrid: Sepín, 2015.

*Within the Latin-American region*

Tenorio Godínez, Lázaro, Nieve Rubaja, Florencia Castro, ed. *Cuestiones complejas en los procesos de restitución internacional de niños en Latinoamérica*. México: Porrúa, 2017.

Tenorio Godínez, Lázaro, Graciela Tagle de Ferreyra, ed. *La Restitución Internacional de la niñez: Enfoque Iberoamericano doctrinario y jurisprudencial*. México: Porrúa, 2011.

*This is just a short list; please feel free to add other books that you may be aware of.*

The HCCH news item is available [here](#). The HCCH Access to Justice Convention is also celebrating its 40<sup>th</sup> anniversary. Unfortunately, this Convention is less used in practice.